

Snell & Wilmer

LLP  
LAW OFFICES  
One Arizona Center, 400 E. Van Buren  
Phoenix, Arizona 85004-2202  
(602) 382-6000

1 Gregory J. Marshall (#019886)  
[gmarshall@swlaw.com](mailto:gmarshall@swlaw.com)

2 Sean J. O'Hara (#024749)  
[sohara@swlaw.com](mailto:sohara@swlaw.com)

3 SNELL & WILMER LLP.

One Arizona Center

4 400 E. Van Buren

Phoenix, AZ 85004-2202

5 Telephone: (602) 382-6000

6 Gregory S. Gilchrist (*pro hac vice* to be filed)

[ggilchrist@kilpatricktownsend.com](mailto:ggilchrist@kilpatricktownsend.com)

7 Jennifer Arkowitz (*pro hac vice* to be filed)

[jarkowitz@kilpatricktownsend.com](mailto:jarkowitz@kilpatricktownsend.com)

8 KILPATRICK TOWNSEND & STOCKTON LLP

Two Embarcadero Center, 8th Floor

9 San Francisco, California 94111

Telephone: (415) 576-0200

10 Attorneys for Plaintiff Clif Bar & Company

11 **IN THE UNITED STATES DISTRICT COURT**

12 **FOR THE DISTRICT OF ARIZONA**

13 Clif Bar & Company,

14 Plaintiff,

15 v.

16 Luna Fitness of Tempe, LLC,

17 Defendant.

No.

**COMPLAINT**

(Jury Trial Demanded)

19 Plaintiff Clif Bar & Company ("Plaintiff" or "Clif Bar") complains against

20 Defendant Luna Fitness of Tempe, LLC ("Defendant") as follows:

21 **JURISDICTION AND VENUE**

22 1. Clif Bar's claims arise under the Trademark Act of 1946 (the Lanham Act)  
23 (15 U.S.C. §§ 1051, *et seq.*). This Court has jurisdiction over such claims pursuant to 28  
24 U.S.C. §§ 1338(a) and 1338(b) (trademark and unfair competition), 28 U.S.C. § 1331  
25 (federal question) and 15 U.S.C. § 1121 (Lanham Act).

26 2. Venue is proper in this Court under 28 U.S.C. § 1391(b) because Defendant  
27 transacts its affairs in this district and because a substantial part of the events giving rise  
28 to the claims asserted arose in this district.

14 Tms pg 4-6

**PARTIES**

3. Clif Bar is a California corporation, located and doing business at 1451 66th Street, Emeryville, CA 94608-1004. Operating since the early 1990's, Clif Bar is now a famous company known for selling sports/energy food and beverages, sponsoring athletic training teams, providing fitness and nutritional advice, operating a socially responsible business, and working closely with environmental and charitable organizations. Among these products and services, Clif Bar's Luna® line of products – which are marketed primarily to women – and its Luna Chix Pro Team are among its most prominent. Clif Bar operates a separate website for its Luna® products and services at [www.lunabar.com](http://www.lunabar.com) ("LUNA Bar website").

4. Clif Bar is informed and believes that defendant Luna Fitness of Tempe is an Arizona Limited Liability Corporation with its principal place of business at 975 East Elliot Road #106, Tempe, AZ 85284. Clif Bar is informed and believes that Luna Fitness offers fitness services, nutritional advice and a variety of related services exclusively for women. Luna Fitness operates a website at which these services are advertised or provided at [www.lunafitnessoftempe.com](http://www.lunafitnessoftempe.com).

**FACTS AND ALLEGATIONS COMMON TO ALL CLAIMS**

**Clif Bar's Trademarks**




5. Clif Bar produces several lines of sports/energy products, including nutrition bars, snacks, and beverages, which are made from organic ingredients and are promoted largely to athletes and nutritionally-minded consumers. Clif Bar's sports/energy food and beverages are sold by many well-known retailers throughout the country, such as REI, Whole Foods, Trader Joe's, Safeway, Wal-Mart, and Target, to name just a few. Moreover, Clif Bar runs several athletic training teams, including the Team Clif Bar and Luna Chix Pro Team. Clif Bar is working toward operating an entirely sustainable company and has run a program since 2001 where its employees collectively donate at least 2,080 hours (the average number of hours many full-time employees work in a year) to charitable causes. Clif Bar is also affiliated with and/or has

1 provided support to a number of environmental, health, and community-based  
2 organizations, such as the Breast Cancer Fund, Habitat for Humanity, Conservation  
3 Alliance, and Greenhouse Network. Accordingly, Clif Bar enjoys a well known and  
4 highly regarded reputation for selling top-quality sports/energy products, owning and  
5 managing professional athletic teams, organizing athletic training teams, and working  
6 diligently to help the environment and a variety of charitable causes.

7 6. Clif Bar's Luna® line of products and services include its famous LUNA  
8 Bar, LUNA Protein and LUNA Minis. These are promoted, for example as "LUNA Bar,  
9 the entirely natural whole nutrition bar for women..." Clif Bar also has organized a  
10 number of women's groups dedicated to sports, nutrition, motherhood, films, campus life  
11 and the like. These include such groups and events as LUNA Moms Club (hosted by  
12 Stroller Strides, the country's largest fitness program for new moms), the Team LUNA  
13 Chix both professional and local (women's cycling teams that raise money for Breast  
14 Cancer research), LUNAFEST (a women's film festival), and LUNA-U (for LUNA  
15 Campus Ambassadors devoted to college campus nutrition and fitness events). Clif Bar  
16 also has marked a LUNA Sport line of fitness and cycling apparel with its LUNA®  
17 trademarks. Clif Bar provides information, advice and articles on women's nutrition,  
18 exercise and weight loss.

19 7. For many years prior to the events giving rise to this Complaint and  
20 continuing to the present, Clif Bar annually has spent great amounts of time, money, and  
21 effort to advertise and promote the products and services on which its LUNA®  
22 trademarks are used. Through this investment and large sales throughout the country,  
23 Clif Bar has created considerable goodwill and a reputation for its high quality LUNA®  
24 products and services.

25 8. Among its registered and common law trademarks related to its LUNA®  
26 line of products and services (collectively "LUNA Marks"), the following table outlines  
27 Clif Bar's federal registrations:  
28

Mark	Goods/Services	Dates
<p>LUNA Reg. No. 3435304</p>	<p>Class 29: Soy-based food bars also containing grains, nuts and fruit.</p> <p>Class 30: Grain-based food bars also containing nuts and fruit.</p>	<p>Filed 09/21/07 Registered 05/27/08 First use 03/12/99</p>
 Reg. No. 2582744	<p>Class 29: Baked products, namely fruit based snack bars.</p> <p>Class 30: Based products, namely, grain based snack bars.</p>	<p>Filed 03/15/99 Registered 06/18/02 First use 03/12/99</p>
 Reg. No. 3391728	<p>Class 29: Soy-based food bars also containing grains, nuts and fruit.</p>	<p>Filed 08/22/07 Registered 03/04/08 First use 03/12/99</p>
 Reg. No. 3842162	<p>Class 12: Women's bicycle saddles; saddle bags, namely, pannier bags for bicycles for attachment to bicycle saddles.</p> <p>Class 25: Women's bicycle clothing and accessories, namely, shorts, tights, knickers, short-sleeve jerseys, long-sleeve jerseys, sleeveless jerseys, wind jackets, insulated warm-up jackets, sweaters, sweatshirts, arm warmers, leg warmers, knee warmers, summer gloves, winter gloves, summer hats, winter hats; women's athletic clothing, namely, sweat pants, tops, sweaters, socks, sports bras; women's hiking, running, and yoga clothing, namely, shirts, pants, shorts, jackets, footwear, hats and caps, socks, tights, sports bras; women's triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits.</p>	<p>Filed 08/08/08 Registered 08/31/10 First use 03/09</p>

Mark	Goods/Services	Dates
LUNA SPORT Reg. No. 3517412	Class 30: Snack food chews made primarily from brown rice syrup.  Class 32: Powders used in the preparation of sports beverages.	Filed 06/05/07 Registered 14/14/08 First use 08/07
TAKE A LUNA MOMENT Reg. No. 3310033	Class 30: Food bars comprised primarily of grains, nuts and fruits.	Filed 09/13/06 Registered 10/09/07 First use 10/05/06
LUNA SUNRISE Reg. No. 3283672	Class 30: Whole grain-based breakfast nutritional bars.	Filed 8/11/05 Registered 8/21/07 First use 06/01/06
LUNA CHIX Reg. No. 3153280	Class 36: Charitable fundraising through sponsorship of sporting events and teams.  Class 41: Organizing, conducting and sponsoring sporting events, namely, mountain biking and road cycling races and events, running competitions, triathelons, and duathelons, organizing, conducting and sponsoring sports clinics in the field of mountain bicycling, road cycling, running, triathelons, and duathelons, organizing, conducting and sponsoring sports teams, and social clubs for recreational athletes.	Filed 05/13/05 Registered 10/10/06 First use 02/28/02
LUNAPRO Reg. No. 3226697	Class 29: Soy-based food used as an ingredient in food bars.	Filed 02/04/05 Registered 04/10/07 First use 09/30/99
LUNA COOKIE Reg. No. 3696812	Class 30: Grain-based snack foods.	Filed 07/30/08 Registered 10/13/09 First use 12/09
LUNA ELIXIR Reg. No. 3350887	Class 32: Fortified dry beverage mix for making fruit-flavored soft drinks.	Filed 11/22/06 Registered 12/11/07 First use 10/05/06
LUNA TEA CAKES Reg. No. 3315638	Class 30: Whole grain-based bars also containing dried fruit, tea and tea extract.	Filed 11/03/06 Registered 10/23/07 First use 10/05/06

Mark	Goods/Services	Dates
LUNA FEST Reg. No. 2669967	Class 41: Conducting entertainment exhibitions in the nature of film festivals.	Filed 01/17/01 Registered 12/31/02 First use 05/01/01
LUNA MOM'S CLUB Reg. No. 3064298	Class 45: Social clubs for mothers.	Filed 09/03/03 Registered 02/28/06 First use 04/05/05

These trademarks are federally registered, in full force and effect, and are exclusively owned by Clif Bar. With minor modernizations from time to time, Clif Bar continuously has used each of the trademarks related to this complaint, from the registration date or earlier, and during all time periods relevant to this Complaint.

9. Among Clif Bar's LUNA® Marks are marks using blue backgrounds to display crescent lunar symbols and silhouettes of athletes, together with other of the LUNA Marks (e.g. Reg. Nos. 2582744 and 3391728). This subset of the LUNA Marks is collectively designated as "Silhouette Marks." The Silhouette Marks are highly distinctive and have become known by consumers to denote Clif Bar's LUNA® products and services

10. Images showing Clif Bar's use of the Silhouette Marks on the LUNA Bar website are attached to this Complaint as Exhibit A.

#### **Defendant's Infringing Luna Fitness Designs**

11. LUNA Fitness operates a fitness center in Tempe. The center is exclusively for women and LUNA Fitness has organized women's groups to combine in such efforts as "SPIN for Charity" or "Zumba-A-Thon to Prevent Childhood Obesity." Like the LUNA Bar web site, the Luna Fitness web site provides information about these groups and charitable efforts, fitness, nutritional and weight loss advice. Luna Fitness uses the "Luna" designation as well as crescent lunar symbols and silhouettes on a blue background in a manner that is nearly identical to LUNA Marks and the Silhouette Marks. Clif Bar is informed and believes, based on the similarity of the websites, that

1 Luna Fitness's web designer deliberately copied from Clif Bar's Silhouette Marks when  
2 preparing the Luna Fitness site. An example of the Luna Fitness web site is attached as  
3 Exhibit B.

4 12. After Clif Bar discovered the Luna Fitness site, Clif Bar's counsel spoke to  
5 Ken Roberts, the owner of Luna Fitness, protesting the similarity in Luna Fitness's  
6 designations, designs and website to the LUNA Marks and Silhouette Marks. After  
7 negotiations and some preliminary indications that it would comply with Clif Bar's  
8 demand that it stop using its "Luna" designation and its other similar designations and  
9 designs, Luna Fitness has refused to comply.

10 13. Luna Fitness's "Luna" designation and other designs and designations,  
11 examples of which are shown in Exhibit C ("Luna Fitness Designs") are confusingly  
12 similar to the LUNA Marks. Unless the Luna Fitness Designs are stopped, consumers  
13 will likely be confused as to the source or origin of Luna Fitness's goods and services  
14 and/or about whether Clif Bar or its LUNA line of products and services are affiliated  
15 with Luna Fitness or whether Clif Bar has sponsored or authorized Luna Fitness or its  
16 products and services in some way.

17 14. Defendant's actions have caused and will cause Clif Bar irreparable harm  
18 for which money damages and other remedies are inadequate. Unless Luna Fitness is  
19 restrained by this Court, it will continue and/or expand the illegal activities alleged in this  
20 Complaint and otherwise continue to cause great and irreparable damage and injury to  
21 Clif Bar by, among other things:

- 22 a. Depriving Clif Bar of its statutory rights to use and control use of its  
23 trademarks;
- 24 b. Creating a likelihood of confusion, mistake and deception among  
25 consumers and the trade as to the source of the Luna Fitness  
26 Designs;
- 27 c. Causing the public falsely to associate Clif Bar with Luna Fitness  
28 and/or its products, or vice versa;

d. Causing incalculable and irreparable damage to Clif Bar's goodwill and the capacity of its LUNA and Silhouette Marks to differentiate LUNA® products from others; and

e. Causing Clif Bar to lose sales of its genuine products and services.

15. Accordingly, in addition to other relief sought, Clif Bar is entitled to preliminary and permanent injunctive relief against Luna Fitness and all persons acting in concert with it.

**FIRST CLAIM**  
**FEDERAL TRADEMARK INFRINGEMENT**  
**(15 U.S.C. §§ 1114-1117; Lanham Act § 32)**

16. Clif Bar realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 15 of this Complaint.

17. Without Clif Bar's consent, Defendant has used, in connection with the sale, offering for sale, promotion, advertising or display of its products and services, designations and designs that infringe upon each of Clif Bar's registered LUNA Marks.

18. These acts of trademark infringement have been committed with the intent to cause confusion, mistake, or deception, and are in violation of 15 U.S.C. § 1114.

19. As a direct and proximate result of Defendant's infringing activities, Clif Bar has suffered substantial damages and irreparable harm.

20. Defendant's infringement of Clif Bar's trademarks is an exceptional case and was intentional, entitling Clif Bar to treble its actual damages and to an award of attorneys' fees under 15 U.S.C. §§ 1117(a) and 1117(b).

**SECOND CLAIM**  
**FEDERAL UNFAIR COMPETITION**  
**(False Designation of Origin and False Description)**  
**(15 U.S.C. § 1125(a); Lanham Act § 43(a))**

21. Clif Bar realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 20 of this Complaint.



22. Defendant's conduct involves the use of symbols or devices tending falsely to describe its products and services, within the meaning of 15 U.S.C. § 1125(a)(1). Defendant's Luna Fitness Designs and conduct are likely to cause confusion, mistake, or deception by or in the public as to the affiliation, connection, association, origin, sponsorship or approval of its products or services, by and to the detriment of Clif Bar, in violation of 15 U.S.C. § 1125(a)(1).

23. As a direct and proximate result of Defendant's infringing activities, Clif Bar has suffered substantial damages and irreparable harm.

24. Defendant's infringement of Clif Bar's trademarks is an exceptional case and was intentional, entitling Clif Bar to treble its actual damages and to an award of attorneys' fees under 15 U.S.C. §§ 1117(a) and 1117(b).

#### **PRAYER FOR JUDGMENT**

WHEREFORE, Clif Bar prays that this Court grant it the following relief:

25. Adjudge that Defendant has infringed the registered LUNA Marks in violation of Clif Bar's rights under 15 U.S.C. § 1114;

26. Adjudge that Defendant has competed unfairly with Clif Bar by infringing its LUNA Marks in violation of Clif Bar's rights under common law and 15 U.S.C. § 1125(a);

27. Adjudge that Defendant and its agents, employees, attorneys, successors, assigns, affiliates, and joint venturers and any person(s) in active concert or participation with it, and/or any person(s) acting for, with, by, through or under it, be enjoined and restrained at first during the pendency of this action and thereafter permanently from:

a. Producing, sourcing, importing, selling, offering for sale, distributing, advertising, or promoting any goods or services using or displaying designations or designs, or words or symbols, that so resemble any of the LUNA Marks as to be likely to cause confusion, mistake or deception, on or in connection with any product or service including, without limitation, any display or use of any of the Defendant's designs or designations which are the subject of this Complaint or any

1 similar designs or designations, or designs or designations that in any way approximate  
2 any of the LUNA Marks;

3 b. Using any word, term, name, symbol, device or combination of them  
4 that causes or is likely to cause confusion, mistake or deception as to the affiliation or  
5 association of Defendant or its products or services with Clif Bar or as to the origin of  
6 Defendant's goods, or any false designation of origin, false or misleading description or  
7 representation of fact;

8 c. Further infringing the rights of Clif Bar in and to any of its  
9 trademarks in its LUNA® brand products or services, or otherwise damaging Clif Bar's  
10 goodwill or business reputation;

11 d. Competing unfairly with Clif Bar in any manner; and

12 e. Continuing to perform in any manner whatsoever any of the acts  
13 complained of in this Complaint;

14 28. Adjudge that Defendant be required immediately to deliver to Clif Bar's  
15 counsel its entire inventory of infringing products or displays including, without  
16 limitation, any packaging, labeling, advertising and promotional materials, and all plates,  
17 patterns, molds, matrices and other material for producing or printing such items, that are  
18 in its possession or subject to its control and that infringe the LUNA Marks, as alleged in  
19 this Complaint;

20 29. Adjudge that Defendant, within thirty (30) days after service of the  
21 judgment, be required to file with this Court and serve upon Clif Bar's counsel a written  
22 report under oath setting forth in detail the manner in which it has complied with the  
23 judgment;

24 30. Adjudge that Clif Bar recover from Defendant its damages and lost profits  
25 in an amount to be proven at trial;

26 31. Adjudge that Defendant be required to account for any profits that are  
27 attributable to its products or services offered in conjunction with the Luna Fitness  
28 Designs, and that Clif Bar be awarded the greater of (1) three times Defendant's profits or

(2) three times any damages sustained by Clif Bar, under 15 U.S.C. § 1117, plus  
prejudgment interest;

32. Order an accounting of and impose a constructive trust on all of  
Defendant's funds and assets that arise out of its infringing activities;

33. Adjudge that Clif Bar be awarded its costs and disbursements incurred in  
connection with this action, including Clif Bar's reasonable attorneys' fees and  
investigative expenses; and

34. Adjudge that all such other relief be awarded to Clif Bar as this Court  
deems just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38, Clif Bar hereby demands trial by  
jury of all issues so triable.

DATED this 5th day of April, 2011.

SNELL & WILMER L.L.P.

By s/ Sean J. O'Hara  
Gregory J. Marshall  
Sean J. O'Hara  
Attorneys for Plaintiff Clif Bar & Company

12806783

Snell & Wilmer

L.L.P.  
LAW OFFICES  
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